

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

CRYSTAL F. STATLER;)	Civ. 06-5003-AWB
ANNA M. APPLGATE; and)	
KARA L. RANDEN,)	
)	
Plaintiffs,)	ORDER
)	
vs.)	
)	
BUFFALO-BODEGA COMPLEX, INC.; and)	
JOHN MCGILL, in his individual capacity,)	
)	
Defendants.)	

The Court received a letter dated July 15, 2008, from John McGill, a defendant in the above-captioned case. The letter to the Court expressed that McGill will not attend the trial set for August 6, 2008, and states “I would like to plead ‘No Contest.’ to the charges.” The Court believes that this letter should be filed in the docket and directs the Clerk of Court to file this letter accordingly.

The Court interprets this letter as a refusal to defend the lawsuit, and pursuant to Federal Rule of Civil Procedure 55, “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Here, McGill’s failure to defend is demonstrated not only by McGill’s letter to the Court of his intention not to defend the lawsuit, but also by his almost total lack of involvement in this lawsuit from its filing over two years ago. See Docket 8, 43, 59, 63.

As the Court now determines that Defendant McGill is in default, and as the Court has previously found that Defendant Buffalo-Bodega Complex, Inc. is similarly in default, Docket 80, 81, no jury trial on the liability of either Defendants is required. Instead, the Court will have a hearing on the question of any damages owed to Plaintiffs by each Defendant.¹ That hearing will be Wednesday, August 6, 2008, beginning at 10 a.m. After the determination of damages is complete, the Court will enter a default judgment against both Defendants pursuant to Rule 55.

Accordingly, it is hereby

ORDERED that the Clerk of Court shall enter John McGill's default in the record of his case.

IT IS FURTHER ORDERED that a hearing to determine the amount of any damages owed to each Plaintiff is set for **Wednesday, August 6, 2008**, at **9:30 a.m.** in Courtroom 2 of the Federal Building, 515 Ninth Street, Rapid City, SD 57701.

Dated: July 28, 2008.

BY THE COURT:

/s/ Andrew W. Bogue
ANDREW W. BOGUE
SENIOR DISTRICT JUDGE

¹ While Plaintiffs requested a jury trial in their complaint, the Court has communicated with Plaintiffs' attorneys and they have withdrawn their request for a jury trial. Additionally, neither Defendant has expressed to the Court that they have a desire or a statutory right to a jury determination on the question of damages. Therefore, it is appropriate that the Court make the determination in regard to any damages owed to Plaintiffs, and the Court will do so.